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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	
Transport Rate Structure)	CC Docket No. 91-213
and Pricing)	
)	
Usage of the Public Switched)	CC Docket No. 96-263
Network by Information Service)	
and Internet Access Providers.)	

**MOTION FOR MODIFICATION OF
PROCEDURAL ORDER**

The United States Telephone Association ("USTA") respectfully requests that the Commission modify its procedural Order¹ in the above-captioned proceedings. Exhibits, appendices, and affidavits of expert witnesses should not be included in the page limits applicable to comments and reply comments filed in this proceeding. USTA is the principle trade association of the local exchange carrier industry.

The Commission issued a clarification of the filing requirements for comments in the access reform proceeding. In its clarification, the Commission stated that page limits on the

¹ See *Clarification of Comment Filing Procedures for Access Charge Reform Notice of Proposed Rulemaking*, CC Docket Nos. 96-262, 94-1, and 91-213, released January 8, 1997.

filing of comments and reply comments would "include exhibits, appendices, and affidavits of expert witnesses."

The Commission's access reform NPRM is an unprecedented undertaking that when completed will fundamentally change the interstate telecommunications landscape. The NPRM is over 140 pages in length, has 317 substantive paragraphs, and asks more than 200 questions which call for detailed responses. Further, the time frame in which to file comments on these complex questions is little more than one month. Therefore, it is critically important that the record in this proceeding contain thorough analyses to ensure that the Commission has the information necessary to make far-reaching determinations about access reform. The Commission's January 8 procedural clarification places serious detrimental limitations on the ability of local exchange carriers and other parties to effectively respond to the Commission's NPRM and to provide the Commission with well-reasoned analyses and exhibits from industry experts.

The LEC industry in particular is seriously prejudiced by being unable to present its arguments and evidence. The LECs, after all, are the entities subject to the rules in question. Interested parties have relied for more than 15 days of the comment period on the filing requirements in the initial NPRM released on December 24.² The December 24 NPRM did not place any limits on attachments to comments on the NPRM. As such, untold financial expense

² See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers*, CC Dockets 96-262, 94-1, 91-213, 96-263, FCC 96-488, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, ¶ 341 (rel. December 24, 1996).

and time has been spent by LECs, and undoubtedly others, working with experts on preparing attachments containing expert analyses in response to the NPRM. Fundamental fairness and due process demand that the Commission's belated January 8 restrictions placed on the filing of attachments be lifted to ensure that LECs are not adversely impacted by being unable to present their evidence as planned and having to absorb expenses and hours of preparation already spent and committed to projects completed or near completion meant to support filings to be made in this proceeding.

Although Congress has given the FCC broad discretion in determining "the manner of conducting its business which would most fairly and reasonably accommodate" the dispatch of its job,³ the rulemaking process balances this discretion, being primarily "designed to assure fairness and mature consideration of rules of general application."⁴ Thus, key in comporting with constitutionally required due process concerns, an administrative agency must above all remain fair to the many competing interests which vie for its attention, direction, and authority. USTA, however, cannot comprehend how the January 8 procedural Order will aid in the fair consideration of the issues raised in the NPRM. Given the strict page limits, attachment of exhibits, appendices and expert affidavits are essential to a full and fair disclosure of information for the record.

Building the best record, however, may be unattainable if all parties are forced to change course in midstream. Even though it could be argued that everyone will be affected equally, this

³ See *FCC v. Schreiber*, 381 US 279, 289 (1965)(citing from *FCC v. WJR*, 337 US 265, 282).

⁴ *NLRB v. Wyman-Gordon Co.*, 394 US 759, 764 (1969).


assertion misses the point. USTA firmly believes that such arbitrary and capricious action cannot lead to a full disclosure of essential industry details applicable to LECs.

USTA urges the Commission to repeal its procedural order. In the alternative, USTA asks that the Commission either: (1) liberally grant requests for waivers of page and attachment limitations; (2) grant a two week extension of time in which to file comments and replies; or (3) double the current page limits so that parties may file a more full, fair and complete record. Precedent in support of USTA's Motion exists in the interconnection proceeding. The Commission, modified its filing requirements by significantly increasing the page maximum "in the interest of building the best possible record."⁵

Accordingly, USTA respectfully submits that good cause has been demonstrated and that grant of the Motion would serve the public interest.

January 10, 1997

Respectfully submitted,



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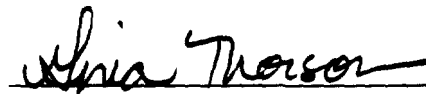
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access2

⁵ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order, CC Docket 96-98, DA 96-700, ¶ 4 (rel. May 7, 1996).

CERTIFICATE OF SERVICE

I, Gina Thorson, do certify that on January 10, 1997 copies of USTA's Replies were either hand-delivered, or deposited in the U.S. Mail, first - class, postage prepaid to the persons on the attached service list.

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